

Attorney Docket No.: 00CON134P-DIV

REMARKS

Prior to the present amendment, claims 18-47 were pending in the present application. Claims 18-47 remain pending in the present application and claims 46 and 47 have been allowed. Reconsideration and allowance of outstanding claims 18-45 in view of the following remarks are requested.

At the outset, it is noted that in the Office Action dated December 27, 2005, the Examiner has *finally rejected* claims 18-45 pending in the application on the basis of new ground(s) of rejection and newly cited art. Applicant respectfully requests reconsideration and withdrawal of the finality of the rejection of the Office Action dated December 27, 2005.

A good and sufficient reason why the present response is necessary and was not earlier presented is that a new reference has been cited in the present final rejection dated December 27, 2005. The new reference is U.S. patent application publication number 2002/0117734 A1 to Marco Racanelli ("Racanelli") which is brought to Applicant's attention by means of the present *final rejection* dated December 27, 2005. Since Racanelli is a new reference upon which the Examiner has now relied, Applicant believes that it would be manifestly unfair for the Patent Office not to withdraw the finality of the present rejection and not to consider Applicant's arguments which are necessitated due to the newly cited reference, Racanelli. As such, a good and sufficient reason exists, as contemplated by 37 CFR §1.116(c), for withdrawing the finality of the present rejection.

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A. Rejection of Claims 18-45 under 35 USC §103(a)

The Examiner has rejected claims 18-45 under 35 USC §103(a) as being unpatentable over alleged Applicant's "admitted prior art" in combination with U.S. patent number 5,321,302 to Hidenori Shimawaki (hereinafter "Shimawaki") and U.S. patent application publication number 2002/0117734 A1 to Marco Racanelli (hereinafter "Racanelli"). Applicant respectfully submits that the present invention, as defined by independent claims 18, 25, and 36, is patentably distinguishable over Shimawaki and Racanelli. In any event, Applicant can disqualify, and does disqualify, Racanelli under 35 USC §103(c).

Under 35 U.S.C. §103(c)(1), "[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person." (Emphasis added). Assuming, *arguendo*, that Racanelli is in fact "prior art," the subject matter developed by Racanelli qualifies as "prior art" only under 35 USC §102(e).

The present application, i.e. U.S. Application Number 10/054,438, and the cited reference Racanelli, were, at the time the presently claimed invention was made, both owned by Conexant Systems, Inc. To evidence this ownership, reference is made to Exhibit A which is a true and correct copy of Pages 1 and 2 of the "Notice of Recordation of Assignment Document" in the present applications' parent application, i.e. parent

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Application Number 09/667,274. Thus, as evidenced by Exhibit A, Conexant Systems, Inc., was the assignee of the presently claimed invention.

Reference is also made to Exhibit B which is a true and correct copy of Pages 1 and 2 of the "Notice of Recordation of Assignment Document" in Racanelli's parent application, i.e. parent Application Number 09/653,982, now U.S. patent number 6,410,975. Thus, as evidenced by Exhibit B, Conexant Systems, Inc., was the assignee of the subject matter disclosed in Racanelli at the time of the presently claimed invention.

Therefore, Applicant respectfully submits that Racanelli is disqualified as prior art under the provisions of 35 U.S.C. §103(c). Accordingly, Applicant respectfully submits that the rejections of claims 18-45 under 35 U.S.C. §103(a) as being obvious with respect to Racanelli have been overcome and that, therefore, claims 18-45 should now be allowed.

B. Conclusion

Based on the foregoing reasons, the present invention, as defined by independent claims 18, 25, and 36, and claims depending therefrom, is patentably distinguishable over the art cited by the Examiner. Thus, claims 18-45 are patentably distinguishable over the art cited by the Examiner. For all the foregoing reasons, an early allowance of outstanding claims 18-45 and an early Notice of Allowance for all claims 18-47 are respectfully requested.

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Respectfully Submitted,
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Date: 2/20/06



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